

FILED

FEB 28 2019

IN THE SUPREME COURT OF IOWA

CLERK SUPREME COURT

**In the matter of the
Commission on Continuing
Legal Education**

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2018 Annual CLE Report

This report of the Commission on Continuing Legal Education is submitted as required by Iowa Court Rule 41.2 for the period January 1, 2018 through December 31, 2018.

THE COMMISSION

Members

Chapter 41 of the Iowa Court Rules establishes the Commission on Continuing Legal Education. Iowa Court Rule 41.2 provides for the appointment of twelve members to the Commission, two of whom are not lawyers. During the period covered by this report, the non-lawyer members of the Commission were Dr. Elaine Smith-Bright of Des Moines and Dr. Chia Ning of Pella. The lawyer members of the Commission during the period covered by this report were:

The Honorable Jeffrey Neary, Merrill
Jayant M. Kamath, Coralville
The Honorable Daniel P. Kitchen, Washington
Joni Keith, Ottumwa
Michael G. Pagel, West Des Moines
Heather L. Palmer, Des Moines
Margaret J. Popp Reyes, Council Bluffs
Danielle Shelton, Des Moines
Janece Valentine, Fort Dodge
Mindi M. Vervaecke, Mason City

Effective July 1, 2018, Judge Jeffrey Neary, Joni L. Keith, and Dr. Elaine Smith-were reappointed to the commission, each for a three-year term ending June 30, 2021. Judge Jeffrey Neary was also reappointed chairperson effective July 1, 2018. Heather L. Palmer was appointed to the Commission on July 1, 2018, for a three-year term ending June 30, 2021. Brian D. Swain concluded his final term on the Commission in June of 2018.

ACCREDITATION

Policies

Although the Commission considers all applications for accreditation on an individual basis, certain general policies regarding accreditation have been developed by the Commission. The current accreditation policies of the Commission are set out at Attachment A to this report.

Procedure

The Commission has granted the director of the office of professional regulation and the assistant directors for boards and commissions the authority to approve individual accreditation requests that clearly qualify for accreditation under the rules and the general accreditation policies of the Commission. When accreditation of a particular event appears unlikely based on Commission policies, the director or assistant director issues an informal

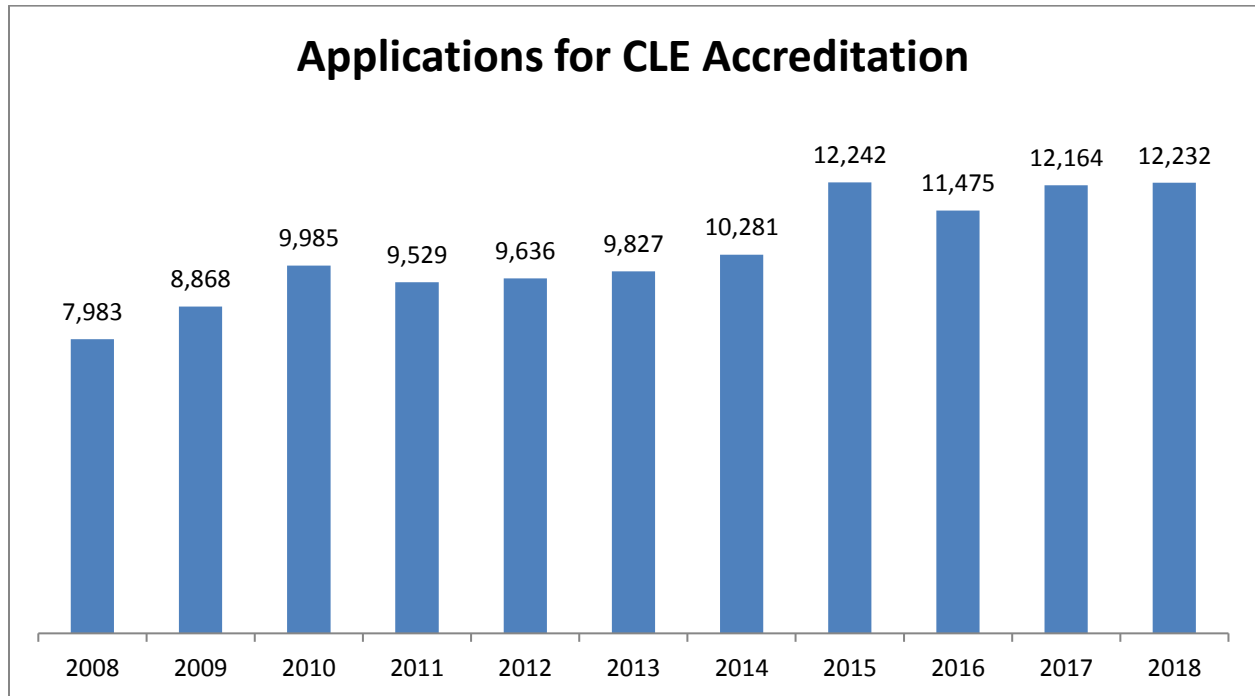
denial of credit, explains the basis for the denial, and advises the applicant of the procedure for appeal. If the applicant desires consideration by an accreditation division of the Commission, the issue of accreditation is referred to one of two accreditation divisions for review.

Appeals

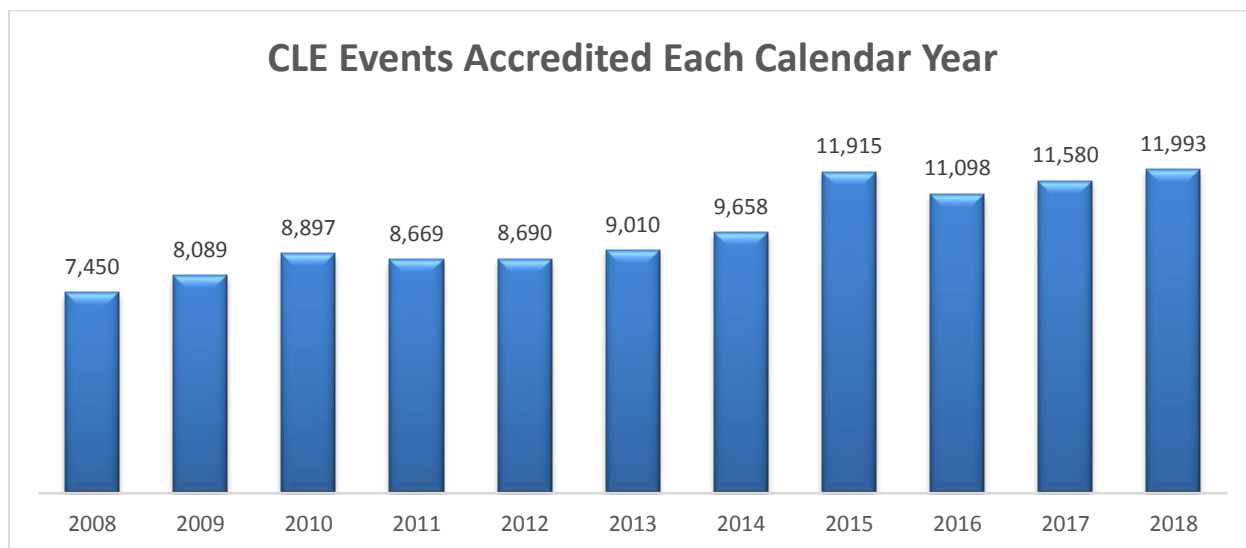
Accreditation matters not resolved by an accreditation division are reviewed and considered by the entire Commission at a regular commission meeting. In recent years, appeals have been relatively infrequent, such that most appeals have been considered and resolved by the entire Commission, sitting as an accreditation division at semiannual meetings.

In 2018 the initial consultation with applicants resulted in denial of credit for 46 applications. Two of these denials were appealed to the Commission pursuant to Rule 42.10. Both of the appeals resulted in the Commission affirming the denial of the accreditation request..

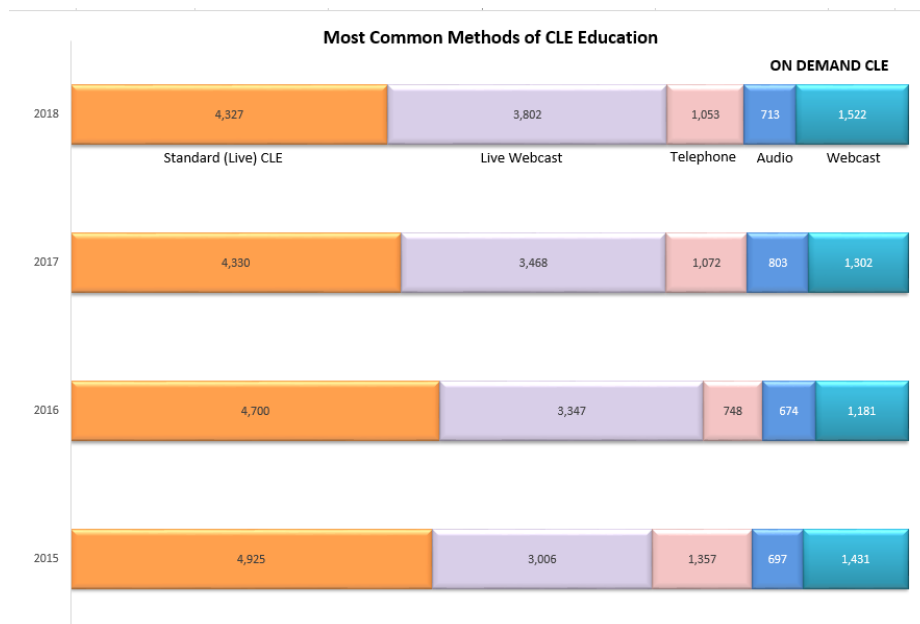
Statistics



During calendar year 2018, 12,232 applications for CLE accreditation were considered. This was an increase of 68 submissions over calendar year 2017, in which 12,164 applications for accreditation were considered. 2018 was just 10 accreditation applications short of the record 12,242 set in 2015, when unmoderated CLE was expanded.



Of the 12,232 individual applications for accreditation considered in 2018, 11,993 applications (98%) were approved in whole or in part. 2018 eclipsed 2015 as the year with the most accredited CLE courses. 2015 was the year the Court expanded the definition of “unmoderated” CLE events, which allowed for more types of on-demand CLE to be available to Iowa’s lawyers.



Live CLE Events

In 2018 there were 9,737 “live” CLE events approved for accreditation for Iowa’s lawyers. These events consisted of in-person, telephonic and webinar based CLE. This was 264 more than in 2017, which only had 9,473. For the past three years, approximately 82% of all CLE accredited for Iowa’s lawyers have been in the “live” category.

There continues to be a slow decrease in Standard (Live) CLE events which has been offset by an increase in webcasts which don’t require a formal venue:

- In 2018 there were 4,327 Standard (Live) CLE events accredited, only 3 fewer than 2017’s 4,330 Standard Live events. 2017 had 370 fewer than 4,700 Standard (Live) Events held in 2016.
- In 2018 there were 3,802 Live Webcast events as compared with 3,468 in 2017 (an increase of 334). In 2016 there were only 3,347 Live Webcast CLE events.
- Live Telephone CLE events stayed about the same in 2018. In 2017 there were 1,072 such events but in 2018 the number slightly decreased to 1,053.
- The last live CLE category, Video Replays (rebroadcasts of prerecorded events) also saw a substantial increase. In 2018 there were 470 such events, compared to 417 events in 2017 and 340 in 2016.

Unmoderated Events

Up to six hours of “on-demand” or *unmoderated* CLE can be utilized each calendar year by attorneys. “Unmoderated activities” is defined generally in the rules, with the Court giving some examples of the formats it contemplated.¹ For accreditation purposes, unmoderated CLE activities fall into one of three categories: “Audio+Video on Demand,” “Audio on Demand,” and “Other Unmoderated.” “Audio+Video on Demand” replaced the prior “Webcast on Demand” category to account for both downloadable and streamed video and audio.

During 2018, a total of 2,256 unmoderated events were accredited for Iowa’s lawyers. This compares to 2,107 unmoderated events in 2017 and 1,864 unmoderated events in 2016. For the past three years 18% of all CLE approved for Iowa’s lawyers have continued to be unmoderated events.

1,522 of the 2,236 unmoderated events were “Audio + Video on Demand,” which is primarily a recorded webinar that is available for viewing on a 24/7 basis. This same category had 1,302 events in 2017.

Accreditations in “Audio on Demand” (primarily recorded telephone CLE) decreased to 713 accredited events. In 2017 there were 803 events.

¹ “*Unmoderated activity*” means a CLE activity presented by delayed or on-demand transmission or broadcast, in pre-recorded media such as audiotape, videotape, CD, podcast, CD-ROM, DVD, self-paced computer-based instruction, or another format, which has an interactive component and is approved by the commission based upon its guidelines. Iowa Court Rule 42.1(7).

ACCREDITATION FEES

Under the Court's rules and commission guidelines, CLE sponsors who charge attorneys a fee to attend or view a CLE program are required to pay a fee to help financially support the CLE application submission system software. Iowa attorneys who attend a CLE event are not charged a fee to submit an event for accreditation. The rationale behind the distinction is that CLE sponsors are receiving a financial profit from the CLE event while the attorneys are not.

For many years the amount of the CLE sponsor fee was \$25 per submission. On November 1, 2017, the amount of the submission fee was increased to \$50 for electronic submissions and to \$65 for paper submissions. The fee increase was put into place to help cover the anticipated costs of upcoming server replacement, Oracle® database licenses, and other costs. Even with the increases, Iowa's CLE accreditation fees remain in line with the majority of states that have mandatory CLE.

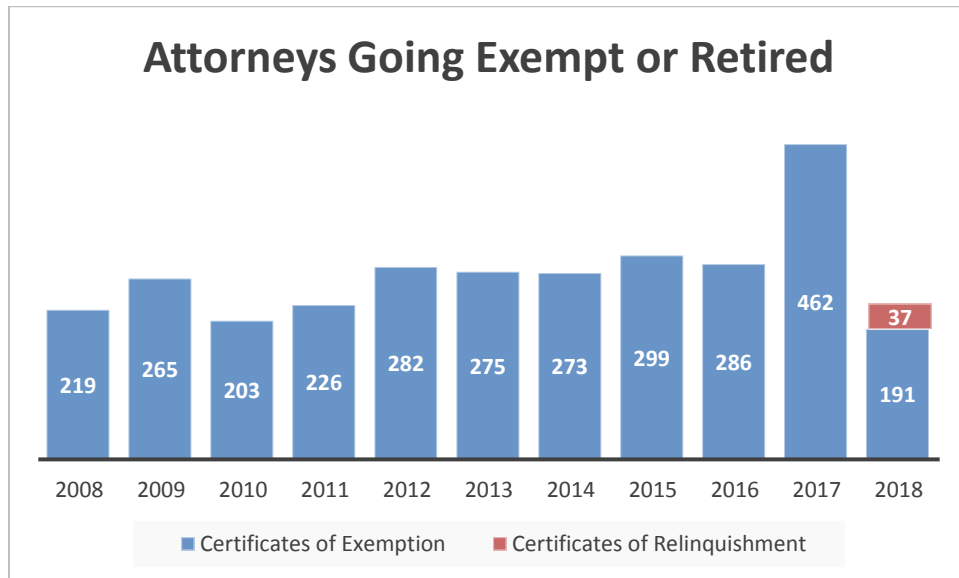
Of the 12,232 CLE submissions in 2018, only 3,873 (32%) of the events incurred an accreditation fee. This is because (a) Iowa attorneys can submit CLE courses for accreditation free of charge; and (b) CLE sponsors can currently "clone" their CLE events so that they are only required to make a single payment regardless of the number of times or methods in which they present the CLE.

Of the 3,873 events that incurred an accreditation fee in 2018, 3,325 were submitted electronically and 548 were submitted via paper application. A total of \$201,875 was received in CLE accreditation fees in 2018.

COMPLIANCE

The annual report due March 10, 2018 was filed by 9,430 attorneys, each of whom also paid the administrative fee of \$10.00. This was 288 fewer attorneys than filed a CLE report in 2017. The change was driven largely by a change to a Client Security rule concerning inactive and exempt status. Under the new rules, attorneys who were granted a certificate of exemption on or before December 31, 2017, would be considered “inactive” while those that filed after that date would be considered “exempt” under the new rule. Neither required the attorney to file an annual CLE report. However, the new client security rule required exempt attorneys to pay a \$50 annual exemption fee so a large number of attorneys decided to go “inactive” before the new rule took effect.

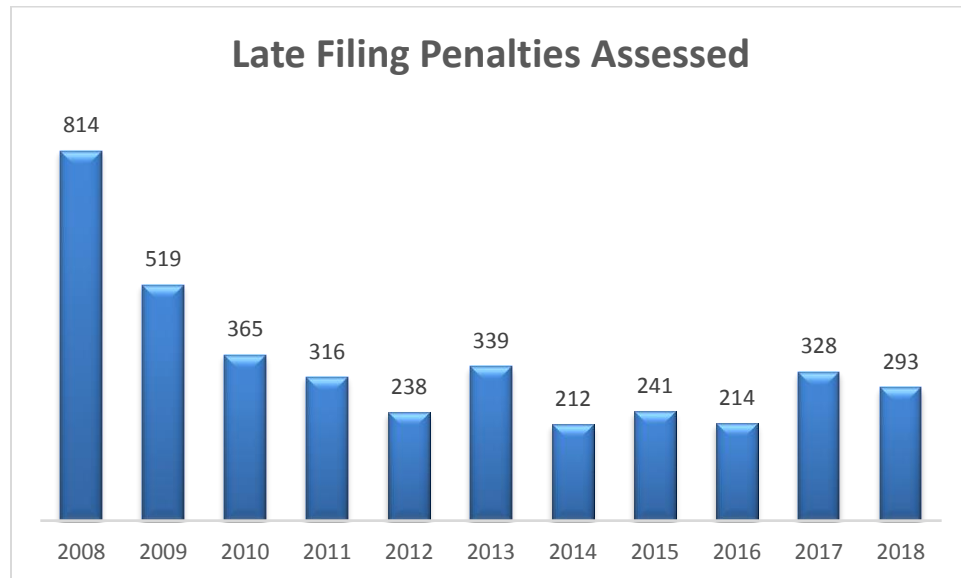
The following table shows the number of exemptions granted each year since 2008. Exemption applications tend to increase in years when a report showing completion of the biennial ethics requirement is due, and when rule changes otherwise increase the perceived level of difficulty achieving compliance. In future years, 2017 will be presumably be looked upon as an anomaly.



There were 37 attorneys who relinquished their law licenses in 2018. In the past these attorneys would have asked for Certificates of Exemption. For this reason the data is consolidated on this chart. Finally, of those lawyers previously granted certificates of exemption, 50 were reinstated to active practice status in 2018. Thirty three attorneys were similarly reinstated in 2017.

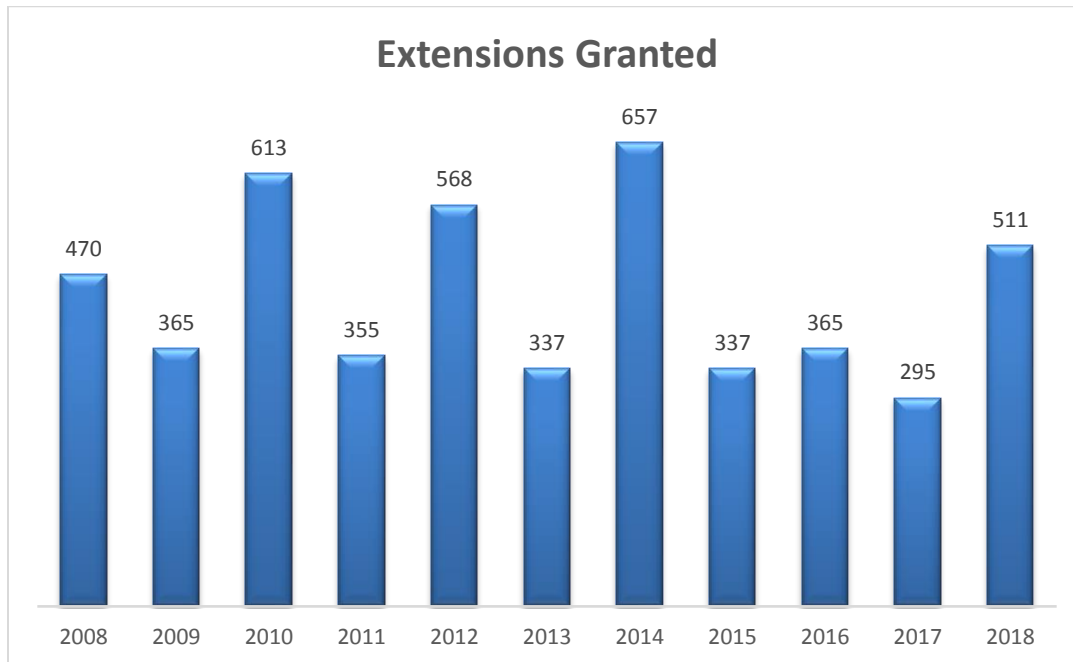
Attorneys who fail to file their annual report or pay any required annual fee by March 10 of each year will be assessed a penalty. Effective January 1, 2009, the late filing penalty was increased to a minimum of \$100, increasing \$50.00 each succeeding month the report is late until a maximum penalty is reached. This maximum was raised to \$250 for the 2018 filing season. As the following chart shows, since 2008 the number of lawyers paying late filing penalties has declined significantly, likely due to the increased amount of the

monetary penalties. On average there are 200-300 attorneys that fail to file their CLE reports in a timely manner:



HARDSHIPS OR EXTENUATING CIRCUMSTANCES

Attorneys who were unable to complete their CLE requirements during the calendar year are required to file an extension in order to put CLE attended in the subsequent year on their CLE report. During 2018, 511 applications for waivers or extensions of time were approved for completion of regular CLE requirements:



Iowa Court Rule 42.5 requires that a \$25.00 fee be assessed on all waiver or extension of time applications received after January 15th of the year following the year in which the alleged hardship occurred. In 2018, 391 applicants were assessed the \$25 fee. In 2017, there were 213 applicants who paid the \$25 fee. Much like exemption applications, requests for extensions of time tend to increase in years when a report showing completion of the biennial ethics requirement is due.

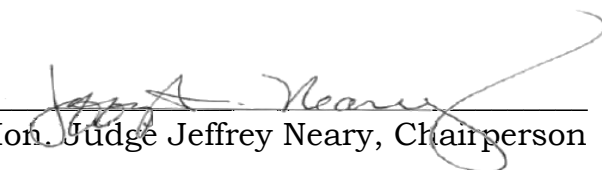
Lastly, during 2018, thirteen attorneys were suspended by the Court for failure to comply with Iowa Court Rule 41.4. This compares to fourteen attorneys suspended in 2017.

FINANCIAL

The independent audit report of the Commission's fiscal operations as prepared by Brooks Lodden, P.C., covering the fiscal year ending June 30, 2018, was submitted to the Court separately. The audit report includes a section entitled *Management Discussion & Analysis*, prepared by Commission staff. Examination of the *Management Discussion & Analysis* statement is recommended in lieu of any separate analysis the Commission might provide regarding financial operations of the Commission.

The Commission submitted and the Court originally approved an operating budget for the year July 1, 2018, through June 30, 2019. See Attachment B. Based on funds on hand and anticipated costs of administration during the 2018–2019 and 2019–2209 fiscal years, as well as the anticipated expenses to be incurred in updating the CLE reporting software application and attendant hardware, the administrative assessment to be paid to the Commission during the 2018 CLE report filing season by each active attorney eligible to practice in this state was increased to \$20.00.

Dated this 28th day of February, 2019.

By 
Hon. Judge Jeffrey Neary, Chairperson

Iowa Supreme Court's Continuing Legal Education Commission's CLE Accreditation Policies*

- (1) Credit is not allowed for committee work or portions of meetings devoted to administrative matters relating to the organizations sponsoring an activity, such as the business sessions of such organizations.
- (2) Credit is not allowed for sessions that involve a combined meal and presentation, e.g., lunch periods with speakers. The standard is that instruction must be a separate and distinct portion of the program, presented in an educational environment. Credit will be allowed if the sponsor splits the time into separate meal and instruction periods, demonstrates that the meal will not intrude on the presentation time, and otherwise shows the existence of an appropriate educational environment.
- (3) Credit is allowed both to presenters and those in attendance at continuing legal education activities. Presenters at an accredited continuing legal education activity are permitted credit for any actual time required to make the presentation, including panel discussions, question-and-answer periods and similar activities. Presenters may claim up to one hour of preparation credit for each hour of CLE for which they prepare written materials and present, up to maximum of (3) hours per year.
 - (a) Preparation credit counts against the regular attendance requirement of fifteen hours per calendar year, but not against the attendance requirement for legal ethics.
 - (b) Hours of preparation credit in excess of three (3) do not carry over to a subsequent year.
 - (c) Preparation credit may not be claimed if an attorney:
 - a. prepares written materials but does not make the presentation or serve on a panel of speakers;
 - b. makes a presentation or serves on a panel of speakers but does not prepare written materials;
 - c. prepares a course directed primarily to persons preparing for admission to practice law; or
 - d. receives compensation, other than reasonable expenses, for preparing or presenting the continuing legal education.
- (4) The granting of credit to instructors or attending lawyers for instruction presented to non-lawyer or predominantly non-lawyer audiences depends on a variety of factors, including but not limited to the subject matter of the course, qualifications of the instructors, depth of the presentation, and the level of attorney participation. Although attendance at these courses may be justified as beneficial and possibly relating to an attorney's practice or a particular pending case, the burden is on the applicant to demonstrate that the course integrally relates to the practice of law and was of sufficient quality and rigor to meet other established standards for accreditation. Therefore, no credit is ordinarily allowed to instructors at educational activities aimed directly or primarily at individuals who have not yet been admitted to the Bar.

*As Approved at May 2004 Commission Meeting, Amended at the May 2006, May 2008, October 2009, May 2011, May 2013, October 2013, October 2014, May 2015, and October 2018 Commission Meetings.

Iowa Supreme Court's Continuing Legal Education Commission's CLE Accreditation Policies*

- (5) A person admitted to practice may obtain credit for taking or auditing a law school course whether at a graduate or regular law school level. A copy of the law school transcript is required when a lawyer requests credit for courses completed incident to a graduate program in law (e.g., L.L.M.) Contact hours are computed based on individual session duration and number of class sessions during the semester. Generally, the number of computed hours will be sufficient to satisfy the general CLE requirement for the year the courses are taken, and provide a 30 hour carry forward, which is the maximum. Ethics requirements still must be separately satisfied.
- (6) Whether or not a continuing legal education activity is sponsored by a non-profit or profit-making organization is considered by the Commission to be irrelevant to accreditation; however, the Commission looks very carefully at courses given by sponsors who appear to be motivated in giving such courses by a desire to assemble a group of attorneys in order to expose the attorneys to the services (other than CLE activities) the sponsor may be able to provide such attorneys or their clients.
- (7) Courses directed primarily at increasing the profits of the practice of law are deemed by the Commission not to meet the standards of Rule 42.3(1)(a) of the Commission's regulations, which requires that the educational activity "contribute directly to the professional competency of an attorney". However, continuing legal education activities dealing with law office management which are directed primarily at improving the quality of or delivery of legal services are deemed by the Commission to be accreditable.
- (8) Except in situations in which permission is specifically granted on applications based on hardship or extenuating circumstances, no credit is allowed for self-study of any kind whether or not aided by video or audio recordings.
- (9) "In-house" activities, that is programs or instruction given by a company or firm for its own employees are considered on a case-by-case basis.
- (10) Video tapes or remote television presentations are generally accredited only if there is a speaker or instructor present at the time and place of showing to answer questions and discuss the presentation with participants in the activity.
- (11) Programs involving non-legal subject matter or courses covering both non-legal subject matter and related common legal subjects designed for attorneys or both attorneys and other disciplines are not ordinarily given prior CLE accreditation. Lawyers may apply for post accreditation after attending such courses. The granting of credit for courses containing non-legal subject matter which are indicated as being integrally related to the practice of law

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Iowa Supreme Court's Continuing Legal Education Commission's CLE Accreditation Policies*

will depend upon a variety of factors including but not limited to the subject matter of the course, qualifications of the instructors, depth of the presentation and attorneys participation. While attendance at these courses may be justified as being beneficial and possibly relating to an attorney's practice or a particular pending case, the burden is on the applicant to demonstrate that the course does integrally relate to the practice of law and was of sufficient quality and content to meet other established standards for accreditation.

- (12) Programs consisting primarily of instruction on the operation or benefits of a particular proprietary software program are not eligible for credit, because they do not include sufficient substantive legal content. Programs that combine instruction on the operation and benefits of a particular program with substantive legal content will be considered on a case-by-case basis, with the burden on the applicant to demonstrate that the primary content pertains to common legal subjects or other subject matters integrally related to the practice of law.
- (13) Ethics must be a separate, designated session. Ethics credit is not approved for a part of a class or session (so-called "imbedded ethics"), unless the sponsor designates a specific time period for the ethics portion of the class or session.
 - (a) The area of legal ethics includes instruction intended for and directed to attorneys or judges and covering topics related to or specifically discussed in the IOWA RULES OF PROFESSIONAL CONDUCT, the IOWA CODE OF JUDICIAL CONDUCT, provisions of the MODEL RULES OF PROFESSIONAL CONDUCT, or provisions of any comparable ethics or professional responsibility code in the jurisdiction where the instruction is presented. The content description or handout materials must specifically refer to and be based on the disciplinary rules or judicial canons, or must bear a direct relationship to the Rules of Professional Conduct or the Code of Judicial Conduct.
 - (b) The area of legal ethics also includes instruction designed to help attorneys detect, prevent, or respond to substance-related disorders or mental illness that impairs professional competence. The instruction must focus on issues in the legal profession and in the practice of law, and not issues of substance-related disorders or mental health in general.
 - (c) The commission does not issue ethics credit for instruction on ethics requirements for government employees generally, such as Iowa Code chapter 68B (Conflicts of Interest of Public Officers and Employees) or its federal statutory or agency counterparts.

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Iowa Supreme Court's Continuing Legal Education Commission's CLE Accreditation Policies*

- (d) Courses directly related to the practice of law that are designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law biases against persons because of race, sex, gender, gender identification, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status or political affiliation, shall be accredited as legal ethics.
- (14) Rule 42.3(1)(d) provides specific authority for accreditation of computer based transmission events, provided they are interactive. The definition of what qualifies as interactive was left to the Commission to develop as policy, so that the interpretation can mature as technology matures and Commission experience dictates. Current policy is as follows:
- (a) For *moderated activities*, the interactive requirement will be met if there is a method for the viewers to send their questions in to the presenters or a live moderator and hear the answers to (or discussions of) those questions live during the presentation. Computer-based transmission presented live must consist of at least a live streaming audio component like that used for live telephone CLE events. Most events in this category also incorporate a video component, in either a streaming video format or a moving slide presentation keyed to the audio transmission.
 - (b) For *unmoderated activities*, there is a limit of six (6) hours per calendar year. Unmoderated activities are valid for CLE accreditation for a period of one year from the date of the activity's production unless the commission determines that the activity's content remains substantively current. In addition to the other applicable guidelines set forth in these accreditation policies and in Rule 42.3(1), all unmoderated activities must contain the following:
 - i. High-quality written instructional materials, which must be available to be downloaded or otherwise furnished so that the attendee will have the ability to refer to such materials during and after the seminar;
 - ii. An interactive component, which either allows the attendee to submit questions electronically or in writing and receive an answer back from the course faculty or other qualified commentator within a reasonable period of time, or requires the attendee to take a mid-presentation quiz, end-of-presentation test or respond to a periodic prompt that branches the instruction based upon the user's demonstrated level of comprehension;

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Iowa Supreme Court's Continuing Legal Education Commission's CLE Accreditation Policies*

- iii. A verification procedure, which independently verifies a lawyer's completion of the activity. Verification procedures for a course in recorded video format for individual viewing may consist of a lawyer reporting a course code to the provider after viewing the video, and attesting to completion of the activity in an affidavit. A lawyer affidavit attesting to the completion of an activity is not by itself sufficient. The CLE sponsor would then verify the accuracy of the code before issuing a certificate of attendance. Activities presented in segments should have a separate and distinct code for each segment, and spaces on the verification form to report all codes. Other acceptable verification procedures include pop-up boxes and time tracking by an online sponsor to independently verify that an attorney has completed an entire activity or the use of examination results in self-paced instruction. Certifications of attendance may be issued to the lawyer only after the sponsor has established that the lawyer completed the activity in its entirety; and
 - iv. An attendance documentation procedure whereby the CLE sponsor retains verification and attendance information for at least two years after the lawyer's completion of the activity and is able to provide that verification and attendance information to the Commission upon request.
- (15) Method of Submission of Accreditation Requests: Requests need not be submitted with an original signature. Requests submitted by facsimile transmission are acceptable, however online submission of accreditation requests at <https://www.iacourtcommissions.org> is highly recommended.

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COMMISSION ON CONTINUING LEGAL EDUCATION

FISCAL YEAR 2018-2019 BUDGET

OPERATING EXPENSES

Salary & Employee Expense	
Director Salary	\$26,386.84
Assistant Director Salary	\$20,795.16
Clerical Salary	\$38,533.34
Vacation/Sick Leave Payout	\$0.00
Part-Time Call Center Support	\$150.00
Part-Time Accreditation Support	\$0.00
FICA	\$6,568.70
IPERS	\$8,105.69
Employee Insurance	\$23,647.54
Deferred Compensation	\$990.00
Travel Expense - Commissioners	\$2,500.00
Travel Expense - Employees	\$500.00
Rent	\$8,126.00
Auditing	\$4,550.00
Telephone	\$1,251.00
Copier Lease	\$600.00
Office Supplies	\$800.00
Printing	\$900.00
Postage	\$3,000.00
Repairs & Maintenance	\$250.00
Employer Insurance	\$1,200.00
Unemployment Insurance	\$40.00
Miscellaneous, Including Moving	\$1,400.00
Banking Fees	\$750.00
Automation Support	\$600.00
Internet App. Maint. & Development	\$22,050.00
Web Site Hosting Expense	\$37,000.00
Internet Payment Charges	\$11,000.00
Payroll Processing	\$350.00
TOTAL OPERATING EXPENSES	<u>\$222,044.27</u>
CAPITAL EXPENDITURES	\$750.00
TOTAL PROJECTED EXPENDITURES	<u>\$222,794.27</u>